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BRIZENDINE *v.* PAITSEL.

Sept. 22, 1921.

[108 S. E. 842.]

Easements (§ 17 (1)*)—Right of Way as between Grantees of Common Grantor Held Controlled by the Deeds, and Not to Include Way as Previously Used.—Where owner of a tract of land conveyed a portion, including land being used as a roadway, without reservation as to use of roadway, to one purchaser, and conveyed to second purchaser another portion, including the right of "ingress and egress through and over the road lying between land of B. (first purchaser) and land of a third purchaser," and where description in deed to first purchaser and map filed therewith showed conclusively that grantor intended to convey to first purchaser the bed of such roadway, second purchaser's successor in interest was not entitled to use the old roadway, though first purchaser for 14 years permitted roadway to be used, and though the land between first purchaser's land and third purchaser's land could not be used as roadway until after difficulties and obstructions had been overcome.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 857.]

Appeal from Circuit Court, Roanoke County.

Bill by F. A. Paitzel against M. Zadok Brizendine. Decree for plaintiff, and defendant appeals. Reversed, and bill dismissed.

Kime & Kime, of Roanoke, for appellant.

Hart & Hart, of Roanoke, for appellee.

FANT *v.* THOMAS et al.

Sept. 22, 1921.

[108 S. E. 847.]

1. Principal and Agent (§ 123 (10)*)—Evidence Held Sufficient to Show that the Agent of Payee Was Authorized to Accept Overdue Interest.—In suit to enjoin foreclosure of deed of trust authorizing foreclosure on default in paying interest, evidence held sufficient to show that payee of note authorized her banker to accept overdue interest.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 254.]

2. Mortgages (§ 335*)—Acceleration Clause Held Valid.—A condition in a deed of trust that, on default in payment of interest the payee of the note secured could cause land to be sold, does not create a penalty or forfeiture against which a court of equity will relieve.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 112.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

3. Mortgages (§ 335*)—Payee Waiving Default in Paying Interest Can Proceed to Foreclose Only on Giving Notice.—Where a payee of a note secured by deed of trust waives a default in paying interest, he cannot again establish his right to foreclose thereunder until he has given due notice of his intentions to the other party.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 89.]

4. Mortgages (§ 335*)—Acceptance of Past-Due Interest Is a Waiver of Right to Foreclose for Default in Payment of Interest.—Where the payee of a note secured by deed of trust, providing that on default of interest the debt shall become payable, accepts the past-due interest, he waives the right to enforce the collection of the entire debt for such default.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 86.]

Appeal from Circuit Court, Culpeper County.

Suit by Oliver Fant against Lucy E. Thomas and others. From decree for defendants, plaintiff appeals. Reversed.

Edwin H. Gibson, of Culpeper, for appellant.

Grimsley & Miller, of Culpeper, for appellees.

THOMPSON et al. v. ARTRIP et al.

Sept. 22, 1921.

[108 S. E. 850.]

1. Appeal and Error (§ 173 (2)*)—Objection to Notice of Termination of Lease Cannot First Be Made on Appeal.—In unlawful entry and detainer proceedings, the objection that the notice to terminate the lease was defective cannot be urged for the first time on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 539.]

2. Landlord and Tenant (§ 115 (1)*)—Continuance of Possession under Supplementary Agreement Held from Month to Month.—Where, before the expiration of a two-year lease, the parties made a supplementary agreement to give lessees a month or two after expiration to close out their business, and lessees thereafter paid monthly rent, the tenancy was from month to month.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 119.]

3. Contracts (§ 22 (1)*)—Formal Acceptance of Offer Not Necessary.—It is not necessary, in order to make a contract, that a proffer submitted by one party, shall be formally and in terms accepted by the other; an acceptance may be by act.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 325.]

4. Landlord and Tenant (§ 114 (3)*)—Presumption of Yearly Ten-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.